

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOJO DEOGRACIAS EJONGA,

Plaintiff,

v.

STEPHEN SINCLAIR, *et al.*,

Defendants.

CASE NO. C20-0320-RSM-BAT

ORDER REVOKING IN FORMA
PAUPERIS STATUS

This matter comes before the Court on a referral from the Ninth Circuit Court of Appeals to determine whether in forma pauperis (“IFP”) status should continue on appeal. Dkt. #61. Pro se plaintiff JoJo Deogracias Ejonga was granted leave to proceed IFP in this matter on March 13, 2020. Dkt. #5.

Plaintiff, an inmate of the Monroe Correctional Complex of the Washington State Department of Corrections (“MCC”), filed this action under 42 U.S.C. § 1983 alleging violations of his constitutional rights and the Americans with Disabilities Act (“ADA”). Dkt. #6. Plaintiff claims violations under the First and Fourteenth Amendments related to Defendants’ enforcement of Department of Corrections policy 450.100-IV, which prohibited Plaintiff from receiving 138

ORDER REVOKING IN FORMA PAUPERIS
STATUS
PAGE - 1

1 photos in a single mailing from the Prosecutor's Office. *Id.* at 20. Plaintiff also brings claims
2 under the Eighth Amendment and the ADA regarding conditions at MCC related to mold and
3 noxious smells.

4 On November 25, 2020, Magistrate Judge Brian A. Tsuchida issued a Report and
5 Recommendation ("R & R") recommending that the Court grant Defendants' motion for summary
6 judgment and dismiss the case with prejudice. Dkt. #45. Following several time extensions,
7 Plaintiff submitted Objections to the R & R on February 17, 2021. Dkt. #53. After reviewing
8 Plaintiff's Complaint, the R & R, Plaintiff's Objections, Defendants' Response, and the documents
9 attached thereto, the Court agreed with the R & R's conclusion that summary judgment dismissal
10 was appropriate. Dkt. #56. Accordingly, the Court adopted the R&R and dismissed Plaintiff's
11 complaint with prejudice. *Id.*; Dkt. #57.

12 An indigent party who cannot afford the expense of pursuing an appeal may file a motion
13 for leave to proceed IFP. Fed. R. App. P. 24(a); 28 U.S.C. § 1915(a)(1). Where, as here, a party
14 was permitted to proceed IFP in the District Court, the party may proceed on appeal in forma
15 pauperis without further authorization unless the District Court certifies in writing that the appeal
16 is not taken in good faith or that the party is not otherwise entitled to proceed IFP. Fed. R. App.
17 P. 24(a)(3); 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken in forma pauperis if the trial
18 court certifies in writing that it is not taken in good faith."). An appeal is taken in "good faith"
19 where it seeks review of at least one issue or claim that is found to be "non-frivolous." *Hooker*
20 *v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). An issue is "frivolous" where it
21 "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).
22 Legally frivolous claims are those "based on an indisputably meritless legal theory," such as
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1 claims against defendants who are immune from suit or for infringement of a legal interest that
2 clearly does not exist. *Id.* at 327.

3 The instant case was dismissed after careful review of Plaintiff's complaint, parties'
4 briefing on summary judgment, the documents submitted in support thereof, and the remainder
5 of the record. The adopted R & R found that Plaintiff failed to raise a material dispute of fact as
6 to his claims under the First, Fourteenth and Eighth Amendments, and under the ADA. Dkt. #45.
7 Pursuant to Fed. R. Civ. P. 56, the Court determined that summary judgment was proper on each
8 of these claims, and further determined that Plaintiff's claim as to unauthorized release of his
9 medical records was meritless. Dkt. #56 at 5-15. Plaintiff appeals the Court's decision on the
10 basis that it was (1) contrary to precedent and (2) contrary to the rules governing summary
11 judgment. Dkt. #59 at 2. He does not identify the legal precedent that he believes the Court's
12 ruling contradicted, nor which aspects of the ruling contravene Fed. R. Civ. P. 56. For the reasons
13 set forth above, the Court believes that any appeal of these rulings necessarily lacks an arguable
14 basis in law or in fact. This Court cannot find that Plaintiff's appeal has been taken in good faith.

15 Accordingly, the Court hereby FINDS AND ORDERS that Plaintiff's in forma pauperis
16 status is REVOKED and CERTIFIES that the appeal is not taken in good faith. The Court
17 DIRECTS the Clerk to forward a copy of this Order to the Ninth Circuit and to the parties.

18 DATED this 1st day of April, 2021.

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21 RICARDO S. MARTINEZ
22 CHIEF UNITED STATES DISTRICT JUDGE
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